

## SENATE—Wednesday, January 24, 2001

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Omnipotent God, who hung the stars in their place, put planets in their orbits, and created humankind on this planet in this universe among universes, You are our Creator, Redeemer, and Lord. Everything within us rallies to express our praise. You have created us to love You, and when love for You is the motive of all we do, all of life is worshiped. Today we want our work to be our way of telling You how much we love You. What a privilege You have given us to serve You out of love in this Senate of this Nation You love and have blessed so bountifully!

Therefore, we commit this day to glorify You so that even mundane duties will serve as a magnificent praise to You. Help us to love and care for the people with whom we work as if in them we meet You dressed in the manifold variety of human personalities. May our constant goal be to do our work with excellence as devotion to You. "Oh Yahweh, our Adonai, how excellent is Your name in all the earth. For You have created us a little lower than Elohim, Yourself, and crowned us with glory and honor to assume dominion over the works of Your hands."—Psalm 8: 1, 5-6. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JOHN ENSIGN, a Senator from the State of Nevada, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

### SCHEDULE

Mr. ENSIGN. Mr. President, today the Senate will be in a period for morning business until 11 a.m. with Senators DURBIN, MURKOWSKI, and COLLINS in control of the time. At 11 a.m., the Senate will resume consideration of Governor Thompson's nomination to be Secretary of HHS. There will be up to 30 minutes of debate on the nomination with a vote scheduled to occur at 11:30

a.m. Additional nominations are scheduled for hearings during today's session, and it is hoped that we can expedite those nominations for full Senate action as early as this afternoon. I thank my colleagues for their attention.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there now will be a period for the transaction of morning business not to extend beyond the hour of 11 a.m. with Senators permitted to speak for up to 10 minutes each. Under the previous order, the time between 10:30 a.m. and 10:50 a.m. shall be under the control of the Senator from Alaska.

The Senator from Alaska is recognized.

### NOMINATION OF GALE NORTON

Mr. MURKOWSKI. Mr. President, for the benefit of all Members, I want to advise them that the Committee on Energy and Natural Resources just concluded reporting out favorably the nomination of Gale Norton as the President's nominee for Secretary of the Interior. The committee vote was 18-2. I don't think there is any question that the nominee, in effect, received a mandate from our committee.

It is interesting to note the thoroughness under which the Energy and Natural Resources Committee conducted 2 days of hearings. I particularly thank Senator BINGAMAN, who chaired the committee during the time under which control of the Senate was under the other party, and all those on both sides who worked to expedite the material necessary to determine the inquiries that came in.

There were 224 questions submitted to the nominee for response. All those questions were answered over a matter of a day and a half. Looking at many of the written questions, I did note that

she had answered in the open hearing most of the questions. In any event, it is interesting that in the case of the former Secretary of the Interior, Bruce Babbitt, the committee reported him out the same day after concluding its hearings. All the questions, of course, were not in on that particular occasion. I point this out for the benefit of those who are students of history and procedure in the Senate.

I join with all our colleagues in congratulating the nominee, Gale Norton. She will be a fine Secretary of the Interior. She is extraordinarily qualified in public lands and will bring back a balance to the assessment of science and technology, as we look to the development of resources on our public lands.

### ENERGY CRISIS IN CALIFORNIA

Mr. MURKOWSKI. I rise today to address the situation in California. I want to make sure there is no misunderstanding. We all have a very legitimate concern for the plight of California from the standpoint of the energy crisis that is underway.

Yesterday the Secretary of Energy extended the order which requires that outside providers of power provide power to the State of California for a period of about 2 weeks. This has serious consequences because there may be some in California who see this as relief, which it is, and believe that relief can continue without any significant correction internally within California.

I do not want to mislead anybody because I am convinced that the administration, in issuing this order of 2 weeks, stands firm in its statement that it will not extend that beyond 2 weeks, which means California is going to have to address a procedure to ensure that payment is made for electricity coming into that State.

I am concerned that the Federal Government has assumed a contingent liability by this order because it has ordered the generators to move that power into California. It did not address how it was going to be paid for. So if the State of California can't pay for it, then there is potentially a cost to the Federal Government. By taking this step, the Government may well have picked up a liability, perhaps a contingent liability. Nevertheless, it is a reality.

This morning at the Energy and Natural Resources Committee business meeting, after discussion with Senator BINGAMAN and other members, we agreed we would hold a hearing next week on the California situation. It would bring in the surrounding

States—Oregon, Washington, Idaho, perhaps Arizona and Nevada—that are kind of interconnected and affected.

We will talk about the Bonneville Power Administration and its role. We will talk about Seattle City Light. And we will talk about short-term and long-term contracts.

We are going to talk about take-or-pay contracts. We are going to talk about the reservoirs at Bonneville's hydroelectric dams are at an all-time low, and prospects for adequate power in the Northwest this summer when there is a heavy load for air conditioning. We are going to talk about the situation of aluminum companies that are now reselling their Bonneville power. We will talk about a situation that came about as a consequence of the Forest Service's inability to provide sales to some of the companies that were generating power from biomass that suddenly find they have no biomass, so the powerplants are shut down.

It is a grave responsibility, and it has come out of a policy of ignorance. When I say ignorance, I don't mean to belittle those who are responsible for the direction of California's energy, but ignorance in the sense that you cannot continue a growing economy, such as California has had—it is equivalent to the sixth largest economy in the world—where you have increased demands for power without increasing generation.

So California consumers face unprecedented problems, zooming electric rates, power shortages. We have two major investor owned utilities on the brink of bankruptcy. Some have suggested they have been guilty of having price structures that are unrealistic. On the other hand, it is hard to believe that they would drive themselves into bankruptcy. I am sure that the Governor of California, Governor Davis, wants cheap rates in California. The question is, are some of those rates going to be underwritten by taxpayers in other parts of the country? Again, we have to help California, but California has to help itself.

Now, in my view, the activities so far in California to correct this have been kind of like shifting the deck chairs around on the *Titanic*—perhaps for a better view or a more comfortable position. But if they don't take real corrective action, the ship is going to sink. The question is, what is it going to take with them? The stockholders and bondholders in Pacific Gas and Electric and Southern California Edison—various teacher unions, and people throughout California who have invested in what previously were the highest rated utilities in the country—suddenly find themselves questioning whether those investments are going to be made good. For all practical purposes, one corrective action may be, if indeed the utilities go into bankruptcy,

is that a Federal bankruptcy judge will dictate the price that California consumers are going to have to pay. Now, that is hard ball, but that is not too far away from happening. In my own opinion, to a large degree California's problems are self-created. They started out with a program that they called deregulation, but really wasn't. It is kind of interesting to reflect on that because they called it the California competition program—a competition enacted by the State legislature in 1996, and the implementation of that law really came into effect January 1, 1998. What they did, they made a mandatory program for California's investor owned utilities, Pacific Gas & Electric, Southern California Edison and San Diego Gas and Electric. Two-thirds of California consumers are served by these three utilities.

But the interesting thing is that California made it voluntary for its publicly owned utilities to join the State's competition program—but none of them joined. So the law and the wisdom of the California legislature said it is voluntary for the publicly owned utilities, but mandatory for the investor owned utilities.

I am not here to discuss the issue of equity. But the essence of California's competition program was to create a vigorous deregulated wholesale power market. And once there was a vigorous wholesale power market, it would create a deregulated retail power market. That sounds good, but the problem is that it never happened on the retail side.

The key elements of the California program were, a rate freeze on the retail price of electricity to consumers until the year 2002, or until the stranded costs were paid off. Those are costs associated with, say, a nuclear plant that shut down, never paid for, and you have to pay for it in the rate structure.

Now, the Federal Energy Regulatory Commission has the authority to regulate wholesale rates. They have seen fit not to put a hard cap on wholesale rates. They say it will harm competition. It is kind of interesting to note that we have seen a bill introduced that would give the authority of FERC to put caps on wholesale rates to the Secretary of Energy. My first reaction to that is you are taking the problem from an objective group that has some expertise in this area and moving it into the political spectrum. I don't know what you really accomplish on that. My first inclination is that that is not a solution to the problem. That is simply transferring the problem into the political realm.

Now, it is kind of interesting because under the California competition program investor owned utilities are required to purchase from the wholesale spot market all of the electricity they sell at retail to consumers. No long-term contracts. The investor owned

utilities were not allowed to enter into electricity contracts to hedge on electric prices. The investor owned utilities were directed to divest their fossil fuel fired powered plants, but allowed to retain their nuclear and hydro facilities. So they did not sell their hydro and nuclear facilities. They were mandated to do this under the California program. The investor owned utilities were directed to divest the fossil fuel, but allowed to keep the nuclear and hydro.

But now some are suggesting that the State of California ought to take over the hydro facilities and, in turn, accept the debt associated, which is somewhere in the area of \$11 billion to \$12 billion. What are you going to do then, have the state run those facilities? Can the State do it better than the private sector? I don't know. But it is another Band-Aid, in my estimation, that doesn't really address the problem.

One, there is a credit problem in California because you can't pay for the power and, B, there is a shortage of generation because the demand has exceeded substantially the generating capacity. California relied on that power company from outside the State, which is fine up to a point; but when the other States' prosperity and economy increases and their demand increases, they suddenly look to the old adage that charity begins at home. They want to take care of the people around them. As a consequence, to depend on outside power is very risky, just like it is very dangerous for this Nation to depend so much on outside oil. We are now 56 percent foreign-oil dependent in this country. By the year 2004, we will be 64 percent dependent on foreign oil, according to the Department of Energy. In 1973–74, we had an oil embargo. Some people are old enough to remember that. We had lines around the block at gas stations. People were outraged, that this should not happen. Congress set up the Strategic Petroleum Reserve. We were 36 percent dependent on imported foreign oil at that time. The parallel is, to what point, what percentage, do you want to be dependent on imported energy?

I ask unanimous consent that I be allowed another 6 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. MURKOWSKI. I also ask unanimous consent that when morning business is due to expire at 11 a.m., it be extended until 11:15.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MURKOWSKI. I appreciate my colleague from Maine accommodating me.

As I indicated, it is a credit problem. It is also a supply problem.

It is kind of interesting to see what is happening. People are rushing out in

California to buy generators to generate their own power. I don't blame them. What does that do to air quality? There is no clean air restriction on that kind of generation, unlike utility-owned generation. We are seeing a situation where there is a threat of bankruptcy. You have the threat of bankruptcy just in determining what the rates are going to be in California. You have convoluted non-workable deregulation in California. The question is: What is California going to do to correct the situation? Action that is overdue because this 2-week order has some significant ramifications which are going to end.

I think there are high hopes that California will have addressed the problem before the end of the two week period.

Now we can point fingers. This is not a partisan issue, it is a bipartisan issue. The question is, How can we put an end to the problem? I think we all learned in Economics 101 that when demand exceeds supply, you get shortages and price increases.

The answer to why California doesn't have enough generation is fairly simple. They have gone out of their way to discourage construction of new powerplants. The permitting of new powerplants has taken forever. They have a severe case of "not in my backyard" when it comes to new electric powerplants and transmission lines.

Remember last summer when Pacific Gas & Electric tried to bring barge-mounted generators into San Francisco—but environmentalists objected?

And right now a major consumer of electricity in California—the high-tech firm called Cisco—is fighting the construction of a new powerplant nearby its office building near San Jose.

For some time now, California has relied on out-of-State generation to meet its growing needs.

As I have said, they did not have to build any new powerplants in the State.

According to the California Public Utility Commission, between 1996 and 1999, only 672 megawatts of new generation were added to California's system.

But during the same period peak demand increased 5,500 megawatts—more than 7 times as much.

You can see this happening. California should have reacted. But the political realities obviously dictated to a large degree the lack of action, because if had they reacted they would have passed these increases, from the standpoint of the purchase price of the generation, on to the California consumer—the taxpayer. There is a political fallout associated with that.

Today California's powerplants within the State are capable of satisfying only three-quarters of the State's hot day peak demand. The remaining one-quarter of California's electricity must be imported from outside the State.

That is a very dangerous situation. As they say, the chickens have finally come home to roost, and California's situation is not going to get better anytime soon.

If California's electrical demand grows at only 5 percent annually, as some have projected, California will have to add three 1,000-megawatt powerplants every single year just to stay even—the equivalent of two Diablo Canyon nuclear plants every 6 years. But according to the California Energy Commission, no major powerplants have been built in California for more than a decade and very little is now under construction.

What is the solution? Is it more regulation? Should we try to turn back the clock? The answer is clearly no. Experience has proven that government regulation cannot stop the forces of supply and demand. To have reasonably priced electricity, you have to have more generation, you have to have transmission. The State will probably have to provide eminent domain for transmission lines, and we must free the market from unnecessary Federal interference.

Consumers in the State of California, this administration, and the FERC must provide the necessary incentives for new generation and transmission to be built. Consumers in the State of California, FERC, this administration, and Congress must help. We must all be part of the solution. And, hopefully, from our hearing in the Energy Committee next week we will begin to get some of the answers and recommendations.

Consumers in California are going to have to shed their "not in my backyard" mentality. If consumers want power, new powerplants have to be built somewhere. The power isn't going to appear magically. New transmission lines have to be built. It is unfair for California to ask people in other States to build powerplants necessarily to satisfy California's demand.

Consumers are also going to have to pay for the power they need. Somebody has to pay for it. We are going to have to do a better job encouraging conservation. But there has to be, if you will, some kind of a carrot and stick. If the consumers are encouraged to conserve and buy a new refrigerator that uses less energy, they have to be motivated to do that because of the increased costs to the consumer. It has to be made worth his or her while, whether it be an air-conditioning unit or some other item.

The government of California is going to have to take leadership in building new generation of transmission facilities, expediting permits, and so forth. They need to expedite those permits and the siting so that the power will be there when it is needed.

In California, for example, 67 percent of the electric powerplants are more

than 20 years old, and 37 percent are more than 40 years old.

California must also allow consumer prices to rise to reflect the cost of the power they are consuming. I think California must also allow consumer prices to rise to reflect the costs of the power they are consuming.

FERC must provide the necessary incentives for new generation and transmission to be built and act more quickly than they have under the previous administration. They have to make decisions to get the facts, and to protect the public. But you have to make the decision.

This administration must support new generation of transmission and make sure that existing generation continues and is not prematurely shut down.

There are impediments to competition. For example, it is high time that PUHCA and PURPA are repealed. We need to find ways to allow construction of new transmission lines. We need to enact legislation to protect the reliability of the grid.

Finally, the State of California made systematic decisions over a 10-year period not to build new powerplants in California while at the same time they watched their power consumption grow. The State made deregulation decisions that didn't remove regulations, it simply changed the regulations, and now, in the face of mounting debt and possibly utility bankruptcy, the State refuses to allow rate increases to pay for expensive non-utility power.

While it would be unrealistic for the State of California to ask the rest of the Nation to pay for its power, notwithstanding the fact that California consumers enjoy—this is a fact—California consumers today enjoy some of the lowest monthly bills in the United States, California needs to make a good-faith effort to accept responsibility in this crisis. It needs to address its credit problems. It must not pursue policies that appear to be intended to bankrupt utilities rather than solve those problems. Then the Federal Government can look at its role in providing assistance. But it is not up to the Federal Government to bail out California from a series of bad decisions. And for the long term, the State needs to be looking at building powerplants and transmission facilities to meet its power needs. The situation in California demonstrates that our energy future is in our hands collectively—the State of California first.

We can take the path of least resistance, as California did, and we can suffer the consequences. Or we can take the actions necessary to ensure our energy future—oil and natural gas as well as electricity.

That is why President Bush and we are seeking to revitalize our energy industry and to formulate a long-term energy strategy that will ensure that

the United States has the energy we need to fuel our economy.

I thank the Chair. I thank my friend from Maine for allowing me additional time.

The PRESIDING OFFICER (Mr. BUNNING). The Senator from Maine is recognized.

Ms. COLLINS. I thank the Chair.

(The remarks of Ms. COLLINS and Mr. KERRY pertaining to the introduction of S. 162 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### A REPORT ON FOREIGN TRAVEL

Mr. SPECTER. Mr. President, in the absence of any other Senator on the floor, I think this would be an appropriate time to report on some foreign travel which I recently undertook for a 2-week period in late December and early January, accompanied on part of the trip by Senator VOINOVICH. Our trip took us to the Mideast, where we had the opportunity to confer with Egyptian President Mubarak, and then in Israel, Prime Minister Barak, and Minister Ariel Sharon, who was contesting for the post of Prime Minister in an election to be held in Israel on February 6; and also former Foreign Minister Shimon Peres.

I then continued on to Aqaba in Jordan and had the opportunity to meet with King Abdullah in Jordan.

We found the Mideast to be very tense, with the exacerbation of violence inspired by Palestinian youth. The Palestinian Authority has not observed their obligation under the Oslo accords to have an educational system which omits the traditional incitement to violence of youngsters. Their educational materials in the sixth grade, seventh grade, ninth grade and beyond, urges the young people to engage in violence—a holy jihad for the glory of Allah—encouraging acts which result in their own deaths as martyrs. That has set into motion a sequence of events in the area where the violence has just been extraordinary.

I think we are really looking at a generational problem—perhaps more than a generational problem—until there is some recognition that the Israelis and Palestinians can live side by side under the terms of the Oslo accords and the implementation, as may be worked out.

When we were there, and to this day, the atmosphere was heavy with doubts as to whether a peace treaty could be reached.

I have complimented President Clinton privately and publicly, and I do so again today, for the efforts he maintained right to the end of his term in office. Now the new administration, I know, will pick up this very difficult issue and will work as best they can to implement the peace process and try to bring stability to that region.

Before traveling to Egypt and Israel, Senator VOINOVICH and I visited Belgrade in Yugoslavia and made a trip into Bosnia. We were enormously impressed with the U.S. military presence in Bosnia, and U.S. soldiers helping to maintain a very fragile peace in that area of the world.

In Yugoslavia, we met the new leaders, who are very impressive men who are carrying forward.

The problem of former President Milosevic is a very big issue in Yugoslavia. The new Yugoslav leaders say they want to try him in Yugoslavia, as he has committed horrendous crimes against the people of Yugoslavia—embezzlement which is estimated as high as \$1 billion, and stealing the election on election fraud. But at the same time, there are competing demands from the War Crimes Tribunal at The Hague.

On my return trip, after Senator VOINOVICH had departed in Israel, I had the chance to meet with the chief prosecutor of the International Criminal Tribunal for the former Yugoslavia, Carla del Ponte, at The Hague. She is insistent on bringing Milosevic to trial at The Hague.

Under the U.N. resolution, there is a priority status accorded to The Hague to try Milosevic.

Perhaps these interests can be reconciled by trying Milosevic first in Yugoslavia, but before he serves a sentence if one is imposed, he goes to The Hague for trial. Ms. del Ponte was concerned that there not be a long interval because the War Crimes Tribunal is a temporary institution. There have been some suggestions that Milosevic be tried by the War Crimes Tribunal in Belgrade, Yugoslavia, but that remains to be worked out.

One thing which must be accomplished, in my judgment, is that Milosevic must be tried and brought to justice. It is enormously important that a head of state be tried.

I note my distinguished colleague, Senator GRASSLEY, has arrived on the floor, so I will conclude these remarks with a comment or two on the discussions which were held with the leaders in India and in Pakistan where there has been a problem of nuclear confrontation and the dispute in Kashmir. There were also discussions on the persecution of Christians, which is a very rampant problem.

Mr. President, on December 28, Senator VOINOVICH and I departed from Andrews Air Force Base and flew across the Atlantic landing late in the evening in Munich, Germany. Consul General Bob Boehme and Economic Officer John McCaslin met us in Munich. The two shared with us their thoughts on a wide variety of subjects ranging from a potential U.S. missile defense system to the current refugee situation in Germany. The next morning we had a working breakfast with representa-

tives of the German/American business community. Our discussions ranged from lack of an educated workforce in Germany resulting in the need for skilled immigrants to staff many of their high-tech companies to harmonization of a European defense force with NATO to the ever-evolving situation in the Balkans. After our breakfast we departed Munich and arrived in Belgrade, Yugoslavia on Friday December 29.

My first visit to Yugoslavia was in 1986, when I visited with then President Moisev. I was last in Belgrade in August 1998 in an attempt to visit then President Slobodan Milosevic to urge him to turn over indicted war criminals. Yugoslavia today is a country undergoing dramatic changes. Recently and most notably is the formation of a democratic form of government. The greatest political achievement of the Serbian people was a peaceful democratic revolution. Public protests usually happen before elections are held when the political tensions are at their greatest. In Yugoslavia, the opposite happened. Mass protests were the only way to guarantee that the popular will expressed at the polls was to be respected by former President Milosevic.

The transfer of power following the electoral victory has not been simple, primarily because of Mr. Milosevic's attempts to falsify obvious electoral results. With widespread support from the citizens, the Democratic Opposition of Serbia secured the recognition of the electoral results and Dr. Kostunica was declared head of state on October 5, 2000. However, full legal transfer of power was not fully accomplished by this proclamation. President Kostunica has insisted on a strict observance of the rule of law. The immediate challenge ahead for President Kostunica and the Federal Government includes dealing in a clear and transparent way with relations in the Yugoslav federation and, in Serbia, resolving the political and security issues related to Kosovo. After my discussions with the various officials from the Serbian and Yugoslav Government, it was clear there is a strong desire for Mr. Milosevic to be tried by the Serbian government and be held to pay for what he has done to the Serbian people before they were willing to turn him over to the officials at The Hague.

We were met at the airport by U.S. Ambassador Bill Montgomery and proceeded to our first meeting with Mr. Vojislav Kostunica, President of the Federal Republic of Yugoslavia. Sen. VOINOVICH and I were the first Congressional leaders to meet with the newly elected President and we congratulated him on his monumental victory. President Kostunica proudly told us that after the recent December 23 elections, democratic party candidates won 176 out of 250 seats in Parliament, Yugoslavia was now ready to push forward with reform. Unfortunately, the new